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2004 MAR -9 AM 8:56

U.S. DISTRICT COURT  
SOUTHERN DIST OHIO  
WEST DIV CINCINNATI

Audley Casanova  
#18131-057  
FCI Jesup, Unit-EB  
2680 HWY 301 South  
Jesup, Georgia 31599  
(Pro se Petitioner)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

AUDLEY CASANOVA,	:	
PETITIONER,	:	
VS.	:	CASE NO. 1:00-CV-579
PAUL BYERS,	:	
RESPONDENT.	:	PETITIONER'S OBJECTION TO REPORT AND RECOMMENDATION
_____	:	

NOW COMES, the Petitioner/Plaintiff, Audley Casanova, pro se, in the above styled cause and respectfully submits his formal objection to the Magistrate's report and recommendation, and states:

1. This cause came before this Court upon Casanova's petition for relief from judgment under FRCVP-60(b). The respondent response thereto, and Casanova relied. Casanova's petition has in essence asked the Court to relief him from the pervious judgment, because it was based upon incorrect facts, that is, the injury did not accure until after his sister spoke with the respondent about

returning his retainer fees, since he refuse to represent him, early in 2000. Because this conversation did not occur until early 2000. He has stated a cause for malpractice.

2. The report and recommendation issued recommended that his request be denied, because Casanova fail to file such within the one year time period.

3. Casanova now submits his formal objections. The report is misplaced in that, it misapplies the law, as govern under FRCVP-60 (b). The report stated that under section 1 through 3, there is a one year limitation to apply for such. This is only true as to sections 1 & 2. Section three (3), entitle "Fraud", does not have a one year time limit.

4. Reviewing Casanova claim under 60(b)(3), would overcome the one year limitation which the report recommends. The question now becomes, whether the Court acted under fraud. Fraud is one in which the Court, Clerk's office or Respondent committed an infraction. By the court concluding that the injury occurred when the Appellate Court's Clerk informed him that the respondent not longer represented him because he became a law enforcement officer, which in truth, the respondent was well aware that he was in discussion which Casanova after that the above mention events had occurred.

WHEREFORE, for all of the foregoing reasons, the Magistrate's report and recommendation should not be adopted by the Court. The Court should grant Casanova's motion for relief from judgment. Declared under 28 USC § 1746.

Dated: March 4, 2004

Respectfully Submitted,

/s/ J Casanova

CERTIFICATE OF SERVICE

I, hereby certify that a true and exact copy of the foregoing was served on Paul Byers, at 310 Ezzard Charles Drive, Cincinnati, Ohio 45214, on March 4, 2004, with proper postage affixed.

/s/ J Casanova